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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,576	02/11/2004	Krzysztof Sowinski	S63.2-14461-US02	2790
499 7590 06/21/2010 VIDAS, ARRETT & STEINKRAUS, P.A. SUITE 400, 6640 SHADY OAK ROAD EDEN PRAIRIE, MN 55344				
EXAMINER BUTLER, PATRICK NEAL				
ART UNIT		PAPER NUMBER		
1791				
MAIL DATE		DELIVERY MODE		
06/21/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/776,576

Applicant(s)

SOWINSKI ET AL.

Examiner

Patrick Butler

Art Unit

1791

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1.5-11, 14-16, 18 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1.5-11, 14-16, 18 and 20 is/are rejected.
- 7) ☒ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date 20100402
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Allowable Subject Matter

The indicated allowability of claim 17 is withdrawn in view of the newly discovered reference(s) to Tu et al. (European Application No. 0269449 A2). Rejections based on the newly cited reference follows.

Information Disclosure Statement

The information disclosure statement filed 02 April 2010 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. Specifically, only one page of JP 10-510196 has been provided.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5-11, 14-16, 18, and 20 rejected under 35 U.S.C. 102(b) as being anticipated by Tu et al. (European Application No. 0269449 A2).

With respect to Claims 1 and 16, Tu teaches making expanded polytetrafluoroethylene tubes capable of diameter change (a method of making an ePTFE tubular structure) (see title and abstract) by uniaxially stretching a tube (forming

a tube of polytetrafluoroethylene having a luminal surface and an abluminal surface; longitudinally stretching said polytetrafluoroethylene tube to form an expanded polytetrafluoroethylene tube) with nodes elongated perpendicular to the direction of expansion and fibrils oriented parallel to the direction of expansion (wherein said expanded polytetrafluoroethylene tube is comprised of fibrils having a first length and oriented in a longitudinal direction of said expanded polytetrafluoroethylene tube and nodes having a first length and oriented in a circumferential direction of said expanded polytetrafluoroethylene tube), radially expanding the tube over a rod to shorten its diameter by reorienting the fibrils (placing said expanded polytetrafluoroethylene tube circumferentially around a longitudinal foreshortening and radially expanding mechanism; applying radial pressure from said longitudinal foreshortening and radially expanding mechanism; radially expanding and longitudinally foreshortening said expanded polytetrafluoroethylene tube over said longitudinal foreshortening and radially expanding mechanism by using said mechanism to apply an outwardly directed force to said luminal surface of said polytetrafluoroethylene tube) under temperatures preferably ranging from room temperature to about 250 °F (wherein said expanded polytetrafluoroethylene tube is heated to a temperature of between about 200 and 350 °F during the radially expanding and longitudinally foreshortening step) (see p. 4, ll. 13-38 and figs. 3-5). Tu's fibrils would meet the claimed limitations of consistent fibril length between longitudinal and radial expansion since the fibrils are not oriented radially to be lengthened during radial expansion (see p. 4, ll. 13-38 and figs. 3-5). Similarly, Tu's nodes would meet the claimed limitations of lengthening between

longitudinal and radial expansion since the nodes are oriented radially to be lengthened during radial expansion (see p. 4, ll. 13-38 and figs. 3-5). Moreover, the claimed fibril and node properties are achieved by Tu principally because Tu teaches the same steps as claimed.

With respect to Claim 5, the fibrils' shape would stay the same principally because they are within the same tube as claimed and subjected to the same steps as claimed.

With respect to Claims 6-11, Tu's tube is radially expanded to 10-100% of the original diameter of the tube (see p. 3, ll. 45-48), which provides for a radial expansion of about 10 times (capable of being radially expanded by at least a factor of 1.5, 2.0, and 2.5), with the initial shrinking of the from the original diameter being necessarily due to a similar order of magnitude of lengthening at 100% per second (capable of being longitudinally elongated by at least about a factor of 1.5, 2.0, and 2.5) (see p. 4, ll. 16-24).

With respect to Claim 14, Tu teaches that after first stretching and before radial expansion, the material is heated (see p. 4, ll. 22-24).

With respect to Claim 15, Tu teaches that the heating cures, cross-links, and sinters (see p. 4, ll. 22-24). Moreover, the claimed structural integrity is attained by Tu principally because Tu teaches the same steps as claimed.

With respect to Claims 18 and 20, Tu teaches making an ePTFE tube as applied to Claim 1 above. Tu's method of making an ePTFE tube would result in a final tubular structure with reoriented fibrils whose nodal orientation has a greater length between

said nodes as compared to said expanded polytetrafluoroethylene tube and whose reoriented fibrils are longitudinally straighter than said fibrils of said expanded polytetrafluoroethylene tube principally because Tu's method uses the same steps as claimed to achieve the final structure.

Response to Arguments

Applicant's arguments filed 02 April 2010 have been fully considered, but they are not persuasive.

Applicant argues with respect to the 35 U.S.C. § 102(b) rejections. Applicant's arguments appear to be on the grounds that:

1) As amended, the rejection of the claims over Edwin et al. (US Patent No. 6,039,755) is moot.

Applicant argues with respect to the double patenting rejections. Applicant's arguments appear to be on the grounds that:

2) As amended, the rejection of the claims over U.S. Patent No. 7,524,445 B2 in view of Edwin et al. (US Patent No. 6,039,755) is moot.

The Applicant's arguments are addressed as follows:

1 and 2) Applicant's arguments with respect to rejections over U.S. Patent No. 7,524,445 B2 and Edwin et al. have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick Butler whose telephone number is (571) 272-

8517. The examiner can normally be reached on Mon.-Thu. 7:30 a.m.-5 p.m. and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. B./
Examiner, Art Unit 1791

/Christina Johnson/
Supervisory Patent Examiner, Art Unit 1791